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Kelly Toys Holdings, LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KELLY TOYS HOLDINGS, LLC,

Plaintiff

v.

ALIALIALILL STORE, BABY -SHOPPING
STORE, BAZINGA STORE, BBOTTRUOYS
TOY STORE, BOBONIU STORE, CHENWANJU
STORE, CHILDREN GROWING TREE STORE,
CHINESE PLUSH TOY STORE, DONGGUAN
SHENGGEN HARDWARE PLASTIC CO., LTD.,
DONGGUAN WOODFIELD BABY PRODUCTS
COMPANY LIMITED, DONGGUAN XINGKE
GIFT CO., LTD., DROPSHIPPING-TOYS
STORE, FAIRYLANDS TOY STORE, FCOT
STORE, FOURTRY STORE, FRANCIS 001
STORE, FUN GAME FUN STORE,
GUANGDONG SANSAN SUPPLY CHAIN CO.,
LTD., GUANGZHOU LITTLE TALENT TOYS
CO., LTD., GUANGZHOU YIMAI TRADING
CO., LTD., HANGZHOU AGREAT IMPORT &
EXPORT CO., LTD., HEBEI KUNI ANIMATION
INDUSTRY CO., LTD., HENAN
YINGHUOZHIGUANG CULTURE MEDIA CO.,
LTD., MIKECRACK STORE, MONSTER

**CIVIL ACTION No.
21-cv-8434 (AKH)**

**[PROPOSED]
ORDER TO SHOW CAUSE**

JELLIE CULTURE CO., LTD., MOVING DREAMING STORE, NANJING RUIFUTONG ARTS AND TOYS MANUFACTURING CO., LTD., QWJA STORE, SHANGHAI QIANJIU TRADING CO., LTD., SHENZHEN TONGFEI INTERNATIONAL TRADE CO., LTD., SHENZHEN HECHUN TECHNOLOGY CO., LTD., SHENZHEN QINGHONG TOYS CO., LTD., SHOP5477120 STORE, SHOP910893006 STORE, SI TING STORE, SZ GTEAK TECHNOLOGY CO., LIMITED, TC XRC STORE STORE, TIKTOK IP STORE, VL STORE, XINXIANG PURUIGE IMPORT AND EXPORT TRADING CO., LTD., YAMONG STORE, YANGZHOU AIXINI INTERNATIONAL TRADE IMPORT AND EXPORT CO., LTD., YANGZHOU AORUNJU GIFTS CO., LTD., YANGZHOU BABYJOY ARTS & CRAFTS CO., LTD., YANGZHOU CUTESHOOT PLUSHIES CO., LTD., YANGZHOU DULALA CRAFTS LTD., YANGZHOU KINGSTONE TOYS CO., LTD., YANGZHOU MARISA TOY GIFTS CO., LTD., YANGZHOU SCS HOMETEXTILE CO., LTD., YANGZHOU WEIHU HANDICRAFT CO., LTD., YANGZHOU WOSEN TOYS CO., LTD., YIWU CHUANYU IMPORT AND EXPORT FIRM, YIWU DUOTONG E-COMMERCE CO., LTD., YIWU FUGUAN HOUSEHOLD SUPPLIES CO., LTD., YIWU HAIPING BAG FACTORY, YIWU QUANFA IMPORT & EXPORT COMPANY LIMITED, YIWU VICTORY IMPORT & EXPORT CO., LTD., YIWU XINTU IMPORT AND EXPORT CO., LTD., YIWU YINWEI HOUSEHOLD PRODUCTS CO., LTD., YIWU ZHENGZHI QIN TRADING FIRM and ZHANJIANG DYNAMIC POINT NETWORK TECHNOLOGY CO., LTD.,

Defendants

GLOSSARY

<u>Term</u>	<u>Definition</u>	<u>Docket Entry Number</u>
Plaintiff or Kelly Toys	Kelly Toys Holdings, LLC	N/A
Defendants	alialialiLL Store, baby -shopping Store, Bazinga Store, BBOTTRUOYS Toy Store, boboniu Store, chenwanju Store, Children Growing Tree Store, Chinese Plush Toy Store, Dongguan Shengen Hardware Plastic Co., Ltd., Dongguan Woodfield Baby Products Company Limited, Dongguan Xingke Gift Co., Ltd., Dropshipping-Toys Store, Fairylands Toy Store, FCOT Store, Fourtry Store, Francis 001 Store, Fun Game Fun Store, Guangdong Sansan Supply Chain Co., Ltd., Guangzhou Little Talent Toys Co., Ltd., Guangzhou Yimai Trading Co., Ltd., Hangzhou Agreat Import & Export Co., Ltd., Hebei Kuni Animation Industry Co., Ltd., Henan Yinghuozhiguang Culture Media Co., Ltd., Mikecrack Store, Monster Jellie Culture Co., Ltd., Moving Dreaming Store, Nanjing Ruifutong Arts And Toys Manufacturing Co., Ltd., QWJA Store, Shanghai Qianjiu Trading Co., Ltd., Shenzen Tongfei International Trade Co., Ltd., Shenzhen Hechun Technology Co., Ltd., Shenzhen Qinghong Toys Co., Ltd., Shop5477120 Store, Shop910893006 Store, SI TING Store, SZ Gteak Technology Co., Limited, TC XRC Store Store, TIKTOK IP Store, VL Store, Xinxiang Puruige Import And Export Trading Co., Ltd., YaMong Store, Yangzhou Aixini International Trade Import And Export Co., Ltd., Yangzhou Aorunju Gifts Co., Ltd., Yangzhou Babyjoy Arts & Crafts Co., Ltd., Yangzhou Cuteshoot Plushies Co., Ltd., Yangzhou Dulala Crafts Ltd., Yangzhou Kingstone Toys Co., Ltd., Yangzhou Marisa Toy Gifts Co., Ltd., Yangzhou SCS Hometextile Co., Ltd., Yangzhou Weihu Handicraft Co., Ltd., Yangzhou Wosen Toys Co., Ltd., Yiwu Chuanyu Import And Export Firm, Yiwu Duotong E-Commerce Co., Ltd., Yiwu Haiping Bag Factory, Yiwu Quanfa Import & Export Company Limited, Yiwu Victory Import & Export Co., Ltd., Yiwu Xintu Import And Export Co., Ltd., Yiwu Yinwei Household Products Co., Ltd., Yiwu Zhengzhi Qin Trading Firm and Zhanjiang Dynamic Point Network Technology Co., Ltd.	N/A

Alibaba	Alibaba.com, an online marketplace platform that allows manufacturers, wholesalers and other third-party merchants, like Defendants, to advertise, offer for sale, sell, distribute and ship their wholesale and retail products originating from China directly to consumers across the world and specifically to consumers residing in the U.S., including New York	N/A
AliExpress	Aliexpress.com, an online marketplace platform that allows manufacturers, wholesalers and other third-party merchants, like Defendants, to advertise, offer for sale, sell, distribute and ship their wholesale and retail products originating from China directly to consumers across the world and specifically to consumers residing in the U.S., including New York	N/A
Sealing Order	Order to Seal File entered on October 6, 2021	1
Complaint	Plaintiff's Complaint filed on October 13, 2021	8
Application	Plaintiff's <i>ex parte</i> Application for: 1) a temporary restraining order; 2) an order restraining Merchant Storefronts (as defined <i>infra</i>) and Defendants' Assets (as defined <i>infra</i>) with the Financial Institutions (as defined <i>infra</i>); 3) an order to show cause why a preliminary injunction should not issue; 4) an order authorizing bifurcated and alternative service and 5) an order authorizing expedited discovery filed on October 13, 2021	14-16
Kelly Dec.	Declaration of Jonathan Kelly in Support of Plaintiff's Application	15
Futtermann Dec.	Declaration of Danielle S. Futtermann in Support of Plaintiff's Application	16
TRO	1) Temporary Restraining Order; 2) Order Restraining Merchant Storefronts and Defendants' Assets with the Financial Institutions; 3) Order to Show Cause Why a Preliminary Injunction Should Not Issue; 4) Order Authorizing Bifurcated and Alternative Service; and 5) Order Authorizing Expedited Discovery entered on October 25, 2021	17
PI Show Cause Hearing	November 12, 2021 hearing to show cause why a preliminary injunction should not issue	N/A
PI Order	Preliminary Injunction Order entered on November 12, 2021	10
User Account(s)	Any and all websites and any and all accounts with online marketplace platforms such as Alibaba and AliExpress, as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendants, their respective	N/A

	officers, employees, agents, servants and all persons in active concert or participation with any of them	
Merchant Storefronts	Any and all User Accounts through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them operate storefronts to manufacture, import, export, advertise, market, promote, distribute, display, offer for sale, sell and/or otherwise deal in Counterfeit Products, which are held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them	N/A
Squishmallows Applications	U.S. Trademark Serial Application No.: 88/471,796 for “SQUISHMALLOWS HUGMEES” for goods in Class 28 and 90/676,140 for “ORIGINAL SQUISHMALLOWS,” for goods in Class 28	
Squishmallows Registrations	U.S. Trademark Registration Nos.: 5,454,574 for “SQUISHMALLOW” for goods in Class 28; 6,137,521 for “FLIP A MALLOWS” for goods in Class 28; 5,962,289 for “MYSTERY SQUAD” for goods in Class 28; and 2,029,047 for “KELLYTOY” for goods in Class 28	N/A
Squishmallows Marks	The Squishmallows Registrations and Squishmallows Applications	N/A
Squishmallows Works	The works covered by the U.S. copyright registrations listed in Exhibit C to the Complaint	N/A
Squishmallows Products	A line of collectable plush toys and pillows made with a super soft, marshmallow-like texture that come in a variety of sizes from 3.5 inch clip-ons to extra large 24 inch plush toys, and include styles such as Hug Mees, Stackables, Mystery Squad and Flip-A-Mallows	N/A
Counterfeit Products	Products bearing or used in connection with the Squishmallows Marks and/or Squishmallows Works, and/or products in packaging and/or containing labels and/or hang tags bearing the Squishmallows Marks and/or Squishmallows Works, and/or bearing or used in connection with marks and/or artwork that are confusingly or substantially similar to the Squishmallows Marks and/or Squishmallows Works and/or products that are identical or confusingly or substantially similar to the Squishmallows Products	N/A
Defendants’ Assets	Any and all money, securities or other property or assets of Defendants (whether said assets are located in the U.S. or abroad)	N/A

Defendants' Financial Accounts	Any and all financial accounts associated with or utilized by any Defendants or any Defendants' User Accounts or Merchant Storefront(s) (whether said account is located in the U.S. or abroad)	N/A
Financial Institutions	Any banks, financial institutions, credit card companies and payment processing agencies, such as PayPal Inc. ("PayPal"), Payoneer Inc. ("Payoneer"), the Alibaba Group d/b/a Alibaba.com payment services (e.g., Alipay.com Co., Ltd., Ant Financial Services Group), PingPong Global Solutions, Inc. ("PingPong") and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of Defendants	N/A
Third Party Service Providers	Online marketplace platforms, including, without limitation, those owned and operated, directly or indirectly by Alibaba and/or AliExpress, as well as any and all as yet undiscovered online marketplace platforms and/or entities through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them manufacture, import, export, advertise, market, promote, distribute, offer for sale, sell and/or otherwise deal in Counterfeit Products which are hereinafter identified as a result of any order entered in this action, or otherwise	N/A
Permanent Injunction Order	Order and Opinion adopting Magistrate's Report and Recommendations and granting Plaintiff's Motion for Default Judgment and a Permanent Injunction entered on June 9, 2022	40

Upon the accompanying Declaration of Danielle S. Futterman in support of Plaintiff's application for an Order to Show Cause Why an Order, pursuant to Federal Rule of Civil Procedure 65 and the Court's equitable and contempt powers, should not be entered granting Plaintiff relief as follows: (1) directing Defendants to comply with the Permanent Injunction Order; (2) directing Third Party Service Providers Alibaba and AliExpress to cease aiding and abetting Defendants in violating the Permanent Injunction Order; and (3) holding Defendants, Alibaba and AliExpress in contempt for their violations of the Permanent Injunction Order, it is hereby:¹

ORDERED that Defendants BBOTTRUOYS Toy Store, Shenzhen Tongfei International Trade Co., Ltd., Yangzhou Kingstone Toys Co., Ltd. and Yiwu Xintu Import and Export Co., Ltd. and Third Party Service Providers Alibaba and AliExpress show cause before the Honorable Alvin K. Hellerstein on May 30, 2023, at 11:00 a.m. in Courtroom 14D, in the United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York 10007, and show cause why an order should not be issued pursuant to Rule 65(d)(2): (1) directing Defendants BBOTTRUOYS Toy Store, Shenzhen Tongfei International Trade Co., Ltd., Yangzhou Kingstone Toys Co., Ltd. and Yiwu Xintu Import and Export Co., Ltd. to comply with the directives of the Permanent Injunction Order; (2) directing Third Party Service Providers Alibaba and AliExpress to cease aiding and abetting Defendants in continuing to engage in their illegal counterfeiting activities in violation of the Permanent Injunction Order; and (3) holding Defendants BBOTTRUOYS Toy Store, Shenzhen Tongfei International Trade Co., Ltd., Yangzhou Kingstone Toys Co., Ltd. and Yiwu Xintu Import and Export Co., Ltd., Alibaba and AliExpress in contempt for their continuing violations of the Permanent Injunction Order.

¹ Where a defined term is referenced herein and not defined herein, the defined term should be understood as it is defined in the Glossary.

ORDERED that the service of a copy of this ORDER TO SHOW CAUSE and its supporting papers (collectively, the “OSC Papers”), shall be made on Defendants, Alibaba and AliExpress by May 14, 2023, and deemed effective as to Defendants if it is completed by the following means:

- 1) delivery of: (i) PDF copies of the OSC Papers or (ii) a link to a secure website (including NutStore.com, a large mail link created through Rmail.com and via website publication through a specific page dedicated to this Lawsuit accessible through ipcounselorslawsuit.com) where each Defendant will be able to download PDF copies of the OSC Papers to Defendants’ e-mail addresses as identified by Alibaba and/or AliExpress pursuant to Paragraph V(C) of the TRO.

Service shall be deemed effective as to Alibaba and AliExpress if it is completed by the following means:

- 1) delivery of: (i) PDF copies of the OSC Papers or (ii) a link to a secure website (including NutStore.com, a large mail link created through Rmail.com and via website publication through a specific page dedicated to this Lawsuit accessible through ipcounselorslawsuit.com) where Alibaba and AliExpress will be able to download PDF copies of the OSC Papers to Alibaba and AliExpress’ Legal and Compliance Department at IPR-USTRO@aliexpress.com and IPR_USTRO@service.alibaba.com; and
- 2) delivery of: (1) PDF copies of the OSC Papers to Alibaba and AliExpress’ outside counsel, Jared Friedmann, Weil Gotshal & Manges LLP via electronic mail to jared.friedmann@weil.com.

The Defendants, Alibaba and AliExpress shall respond in writing to this Order to Show Cause by May 21, 2023. The Plaintiff may reply by May 25, 2023.

SO ORDERED.

SIGNED this 9th day of May, 2023, at 1:00 p.m.
New York, New York

/s/ Alvin K. Hellerstein
HON. ALVIN K. HELLERSTEIN
UNITED STATES DISTRICT JUDGE